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No. 8

IN THE

Supreme Court of the United States

OCTOBER TERM 1929.

MEMPHIS & CHARLESTON RAILWAY COMPANY, *Appellant*,
v.
C. L. PACE, *et al.*, *Appellees*.

STATEMENT AS TO JURISDICTION ON APPEAL.

S. R. PRINCE,
JOHN B. HYDE,
Counsel for Appellant.

L. E. JEFFRIES,
ELY B. MITCHELL,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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STATEMENT AS TO JURISDICTION ON APPEAL.

May It Please the Court:

The appellant, in support of the jurisdiction of this Court to review the above entitled case on appeal, respectfully represents:

I.

STATUTORY PROVISION SUSTAINING JURISDICTION.

Jurisdiction of the Supreme Court of the United States on appeal is invoked by appellant under Section 237a of the Judicial Code of the United States, as amended by the Act of February 13, 1925 (43 Stat. 937), 28 U. S. C. 344a (as in effect prior to the Act of January 31, 1928, 28 U. S. C. 861a, 861b, Chapter 14,

45 Stat. 54, or the amendatory Act of April 26, 1928, 28 U. S. C. 861b, Chapter 440, 45 Stat. 466), and pursuant to the provisions of the said last two mentioned acts of the year 1928, said Section 237a of the Judicial Code as amended by the said Act of February 13, 1925, 28 U. S. C. 344a, as pertinent to this case, providing as follows:

> "* * * A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, * * * where is drawn, in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. * * *"

For the "writ of error" specified in Section 344a above, an "appeal" has been substituted by said Acts of the year 1928, specified above.

II.

DATE OF JUDGMENT AND DATE OF APPLICATION FOR APPEAL.

The judgment of the Supreme Court of Mississippi sought to be reviewed was rendered on April 15, 1929 (R. 314).

The application for appeal was presented on July 8, 1929 (R. 340)..

III.

NATURE OF CASE AND RULINGS BELOW.

This is a suit filed to enjoin the collection of an assessment for special road district taxes imposed on

appellant by a special road district in the State of Mississippi, created under and pursuant to the provisions of Chapter 277, Laws of Mississippi of 1920, the creation of said district having been legislatively validated by Chapter 1080, Private and Local Laws of Mississippi of 1926, and Chapter 278, Laws of Mississippi of 1926, being Section 8547 of Hemingway's 1927 Code of Mississippi. The suit was commenced in the chancery court of Tishomingo County, Mississippi, by original bill filed on May 13, 1927 (R. 6-25), in which bill the validity of said assessment against appellant was attacked on the grounds, among others, that said statutes as applied to appellant were repugnant to the Constitution of the United States, being violative in particular of the Fourteenth Amendment to said Constitution.

Chapter 277, Laws of Mississippi of 1920, was alleged in the bill to be repugnant to the due process clause of said Amendment in that no notice or right to hearing was afforded in the creation of said special district, and that in any event the said assessment was plainly arbitrary, unreasonable and discriminatory and was thus violative of the due process and equal protection clauses of said Amendment; and that the validating acts of 1926 were likewise void (Bill, R. 6-25).

From an adverse decision in the said chancery court (opinion of lower court, R. 260-263) and a judgment dismissing the cause (R. 269), the appellant appealed to the Supreme Court of Mississippi, the highest court in the State in which a decision could be had, assigning errors, which raised all of the above constitutional questions, among others (Assignments of Error in the Supreme Court of Mississippi, R. 278-282).

The said Supreme Court of Mississippi on the ap-

peal held (a) that Chapter 277, Laws of Mississippi of 1920, was not violative of the due process clause because special road districts organized thereunder were the equivalent of legislatively created districts, (b) that Chapter 1080, Private and Local Laws of Mississippi of 1926, and Chapter 278, Laws of Mississippi of 1926, were valid under the Mississippi constitution and served to validate the organization of the district, even if invalid theretofore, and (c) that the assessment imposed on appellant by the said statutes and the proceedings in conformity thereto was not wanting in due process of law, nor so discriminatory as to deny the equal protection of the laws, the court saying, in the final opinion rendered on April 15, 1929 (R. 315-327):

> "(5) Appellant contends that chapter 277 of the Laws of 1920 also violates the equal protection clause of the Fourteenth Amendment, because it is unreasonably discriminatory *per se,* in that the burden of taxation is not spread over the district in proportion to the benefits, but only in proportion to the accidental facts, including the general wealth of the individuals and corporations chancing to have taxable property in the district; and for the further reason the act authorizes the taxation of real and personal property, based on its general assessed valuation, to pay the cost of local improvements to real property. To sustain that position, appellant relies on Road Improvement Dist. No. 1 v. Missouri Pacific R. R. Co., 274 U. S. 188, 47 S. Ct. 563, 71 L. Ed. 992, and other decisions of the Supreme Court along the lines of that case. The taxing district involved in that case was not an ad valorem district, but a special benefit assessment road district. The assessment against the railroad company for road improvements was based upon per-

sonal property, as well as real property, while all other assessments in the district were confined to real property alone. The assessment against the railroad was 13.2 per cent. of the costs of a hard-surface road paralleling the railroad. The area of the railroad in the road district was eight-tenths of 1 per cent. of the entire area of the district. The court held that the assessment was plainly arbitrary and discriminatory, and violative of both the due process and the equal protection clauses of the Fourteenth Amendment.

"We have no such case here. All property in the district involved in this case, both real and personal, on which an ad valorem tax is levied for general state and county purposes is likewise levied for road purposes of the district. Appellant lays stress on the following facts: The area of the district is 2,950 acres, of which appellant owns only 57.79 acres, which is 1.9 per cent. of the whole acreage; the assessed valuation of appellant's property in the district is 62.39 per cent. of the entire assessed valuation of the district. The evidence showed, however, that the proceeds of the bonds issued for the district had been expended on public roads, and none of the roads constructed ran parallel with the appellant's line of railroad, but nearer at right angles with it; that the road district was composed of a little less than five sections, but that the sections were not strung along, one after the other, so as to take in as much of appellant's line of railroad as could be done; and, furthermore, the evidence tended to show, and the chancellor found as facts, that the improved roads in the district would benefit appellant's business as a common carrier, both directly and indirectly—that the direct benefit would be derived from an increased tonnage for appellant from the gravel mines in the district, which gravel mines were made more accessible to miners by virtue of the improved roads. In other words, that the im-

proved roads increased the labor facilities in the gravel mines to such an extent that the output of the mines would be materially increased, the output of the mines being transported alone over appellant's lines of railroad. *We are unable to see that the operation of the statute has worked any arbitrary and unreasonable discrimination against appellant.* We do not think the cases relied on by appellant at all decisive in favor of appellant's contention." (Italics added.)

Memphis & Charleston Railway Co. v. Bullen, —— Miss. ——, 121 Southern 826 (loc. cit. 832).

The judgment of the lower court, dismissing the cause, was accordingly affirmed (R. 314).

This judgment of the State's highest court foreclosed a review in this Court of all technical questions considered below having to do with the original creation of the special district and there is here sought but to review the two questions stated in the Assignments of Error in this Court, incorporated in the Petition for Appeal (R. 337-340), namely:

(1) Whether or not the imposition of special road taxes, by the express force of said statutes themselves, upon all property, personal as well as real, within the special district, not in proportion to the specific benefits to such property, but in proportion to its general taxation value, is palpably arbitrary and discriminatory; in any event the inclusion of appellant's personal property in the basis for taxation being capricious, arbitrary and discriminatory; thus being violative of the Fourteenth Amendment.

(2) Whether or not the assessment against appellant, imposed by force of such statutes, is so plainly and palpably arbitrary, is so grossly excessive in

amount, is so unreasonably discriminatory, and is such a plain abuse as to take appellant's property without due process of law and to deny to appellant the equal protection of the laws, thus being violative of the said Fourteenth Amendment.

IV.

CASES BELIEVED TO SUSTAIN JURISDICTION

The following decisions of this Court are believed to sustain jurisdiction of this appeal.

A.

As to Right of Appeal (as substituted for Writ of Error):

Miller v. Schoene, 276 U. S. 272.
King v. City Council of Augusta, 277 U. S. 100.
Sultan Ry. & Timber Co. v. Department of Labor and Industries of the State of Washington, 277 U. S. 135.
Sprout v. City of South Bend, Ind., 277 U. S. 163.
Larson v. State of South Dakota, 278 U. S. 429.
Salomon v. State Tax Commission of New York, 278 U. S. 484.

B.

As to the assessment being violative of the Fourteenth Amendment:

Gast Realty & Inv. Co. v. Schneider Granite Co., 240 U. S. 55.
Thomas v. Kansas City Southern R. Co., 261 U. S. 481.
Kansas City Southern R. Co. v. Road Improvement Dist. No. 3, 266 U. S. 379.

Road Improvement District No. 1 v. Missouri Pacific R. Co., 274 U. S. 188.
Standard Pipe Line Co. v. Miller County Highway, etc. District, 277 U. S. 160.

It is therefore respectfully submitted that this Court has jurisdiction of this appeal by virtue of Section 237a of the Judicial Code, 28 U. S. C. 344a.

Respectfully submitted,

S. R. PRINCE,

JOHN B. HYDE,

Counsel for Appellant.

L. E. JEFFRIES,
ELY B. MITCHELL,
Of Counsel.

District of Columbia, City of Washington:

John B. Hyde, being duly sworn, makes oath and says that he mailed by United States Registered Mail copies of the foregoing Statement as to Jurisdiction on Appeal, to counsel of record for the appellees on the 5th day of August, 1929.

JOHN B. HYDE.

Sworn to and subscribed before me this the 5th day of August, 1929.

P. K. HOWARD,
Notary Public.

My commission expires May 29, 1930.